

JOHN W. HUBER, United States Attorney (No. 7226)
MARK Y. HIRATA, Assistant United States Attorney (No. 5087)
Attorneys for the United States of America
111 South Main Street, #1800
Salt Lake City, Utah 84111
Telephone: (801) 524-5682

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	Case No. 1:18-cr-00052-JNP
Plaintiff,	:	
v.	:	POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING FACTORS
MARKUS CRUZ,	:	
Defendant.	:	Judge Jill N. Parrish

The United States of America, by and through Assistant United States Attorney Mark Y. Hirata and pursuant to DUCrimR 32-1, confirms the absence of any objections to the final Presentence Investigation Report (“final report”).

As to defendant’s lone objection to paragraph 12 of the final report, the base offense level was correctly calculated at 20 points because his conviction for Aggravated Assault under the Utah Code is a crime of violence, as recently held by the Tenth Circuit in *United States v. Bettcher*, 2018 WL 67122 (10th Cir. 2018). Irrespective of the

pending request for *en banc* review of the *Bettcher* case, it is and remains the law of the Tenth Circuit and supports the enhancement to defendant's base offense level premised on his crime of violence for Aggravated Assault under Utah law.

DATED this 9th day of February, 2019.

JOHN W. HUBER
United States Attorney

/s/ Mark Y. Hirata

MARK Y. HIRATA
Assistant United States Attorney

Certificate of Service

I certify that on the 9th day of February, 2019, the foregoing POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING FACTORS was filed electronically and caused to be served by electronic notice or via first class mail, postage prepaid, to the following:

Benjamin A. Hamilton, Assistant Federal Defender
UTAH FEDERAL DEFENDER'S OFFICE
46 West Broadway, #110
Salt Lake City, UT 84101

/s/ Mark Y. Hirata